IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No. 1254 of 2005

1. Vishwanath Ramchandra Bal
since deceased by his heirs
1-1 Smt.Malti Vishwanath Bal
and others ..Appellants

vs.

1. Smt.Sumati Kashinath Bal
since deceased by heirs
1.Sou.Vasundhara Vinayak Ghaisas
andothers ..Respondents

Shri Mandar Limaye for appellants.
Shri S.S.Sadavarte for respondent nos.1(1) to 1(4), 2 and 3.

CORAM: S.C.DHARMADHIKARI J.
18th July, 2007

P.C.

1. Reg.Civil Suit No.4 of 1997 which was filed by the appellant/plaintiff for permanent injunction restraining the respondent/defendant from disturbing the exclusive possession of a portion which, according to the plaintiff, is adjacent to the cattle shed, popularly known as "Avat" (place for keeping wood) was dismissed and an appeal therefrom has also been dismissed by the lower Appellate Court.

2. In this second appeal, Shri Limaye contends that the Courts below have failed to appreciate that once the oral

partition took place, admittedly, in the year 19561 the cattle shed has come to the share of the present appellant/plaintiff, then, this portion goes necessarily with the cattle shed and, therefore, comes to the share of the appellant/plaintiff. Such being the admitted position on record, there was no warrant in dismissing the suit on the ground that the appellant/plaintiff failed to establish his exclusive possession of this portion. In such circumstances, according to him, even if the findings of fact are concurrent, they are vitiated as the partition deeds and other documents produced on record required to be interpreted and there was no necessity of the appellant/plaintiff being called upon to establish the exclusive possession.

3. I am unable to accept this contention for obvious reasons. The Courts below upon scrutiny of the material produced came to the conclusion that the oral partition which is admitted by both sides would not advance the case of the plaintiff any further. For this portion, which is adjacent to the cattle shed, the suit was filed claiming that to be the property of the appellant/plaintiff, then, naturally burden was on the appellant/plaintiff to establish that the said portion comes to the share and is in exclusive possession of the plaintiff. That the witnesses examined by him, who were duly authorised to depose, failed to establish this fact is clear from the

findings in paras 18 and 19 of the Trial Court's judgment and that is how in para 21 the Trial Court concluded that the plaintiff failed to produce any documentary evidence with regard to possession of this avat which is 3 feet land around north, south and west to the cattle shed. The admission of the appellant/plaintiff's witness that in the partition document of 1951 this portion is not mentioned has rightly been taken into consideration by the courts below to deny the claim of the appellant. Said findinng of fact has not been disturbed by the lower Appellate Court as well. The lower Appellate Court upon scrutiny of the material has once again denied the relief to the appellant on the basis that the document of 1951 which evidence partition does not specify and speak anything about this portion coming to the share of the appellant/plaintiff.

4. In my view, the concurrent findings of fact rendered in consonance with the oral and documentary evidence on record do not warrant any interference as this is not the Court of further appeal. No substantial question of law is raised. Second appeal is summarily dismissed.

(S.C.DHARMADHIKARI J.)